

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000698

10/21/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

UNITED HEALTHCARE OF ARIZONA INC

DOUGLAS GERLACH

v.

ARIZONA STATE DEPARTMENT OF
INSURANCE

MARY E KOSINSKI

OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

This case, filed pursuant to the Administrative Review Act, has been under advisement since the time of oral argument and the Court has considered and reviewed the record of the proceedings, exhibits made of record and the excellent memoranda submitted.

Plaintiff United Health Care of Arizona, Inc. filed the instant complaint for administrative review of the Arizona Department of Insurance decision to disapprove a policy filing made by the Plaintiff. The Director of the Arizona Department of Insurance ("DOI") disapproved Plaintiff's policy filing because a portion of the policy proposed (and to be offered by Plaintiff's partner United Disability) placed an impermissible limit on the number of spinal treatments that United Disability would cover. The Director concluded that such a limitation was discriminatory against chiropractors within the State of Arizona. This Court concurs with that conclusion and will affirm it.

Pursuant to A.R.S §12-910(e) this court may review administrative decisions:

The Superior Court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

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The scope of review of an agency determination under the Administrative Review Act places the burden upon the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.¹ The reviewing court may not substitute its own discretion for that exercised by the agency,² but must only determine if there is any competent evidence to sustain the decision.³

The facts of this case reveal that the Plaintiff proposed limitation in policies which were disapproved by DOI on April 5, 2002. The Plaintiff proposed to limit the number of visits for spinal treatment services to providers within the network to twelve (12) per year (this was approved as a within network limitation), and to limit the number of visits for the same services by providers outside of the network, to twelve per year (this proposal was disapproved). Plaintiff appealed the DOI disapproval, and this case proceeded to a full hearing before Administrative Law Judge, Constantino Flores. The ALJ heard the matter on July 31, 2002, and rendered his decision on October 31, 2002 upholding DOI's decision. On November 5, 2002, the Director of DOI issued an order adopting the ALJ's findings of fact, conclusions of law and proposed order. This administrative appeal has followed.

This Court concurs with DOI's position that several facts are determinative in this case: Plaintiff proposed to offer its point-of-service plans jointly with an affiliated company, which provided disability insurance coverage. This disability insurer would be responsible for underwriting the non-network portions of the policies.

Plaintiff's contention that A.R.S. Section 20-1057.03 applies to this case is misplaced. Specifically, that statute does not apply to the policy filings offered by the Plaintiff in conjunction with the disability insurer. This statute simply does not apply to disability insurers, contrary to Plaintiff's arguments.

The Director of DOI's determination that Plaintiff's proposed limitation on non-network "spinal treatments" is discriminatory to chiropractors, is supported by the evidence in this case and the law. A.R.S. Section 20-461(A)(16) prohibits disability insurers from failing to pay reasonable and necessary charges for services provided by licensed physicians, which include medical doctors, osteopathic doctors, or chiropractors.

After a careful review of the record in this case, this Court finds that the Director of DOI's decision was supported by substantial evidence, was not contrary to law, but rather

¹ *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

² *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

³ *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz. App. 432, 484 P.2d 201 (1971).

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supported by applicable Arizona statutes. Further, this Court finds that the Director's decision was not arbitrary, capricious or an abuse of discretion.

IT IS THEREFORE ORDERED affirming the decision of the Director of ADOI in this case.

IT IS FURTHER ORDERED denying all relief as requested by the Plaintiff in its complaint.

IT IS FURTHER ORDERED that counsel for the Defendant shall lodge an order consistent with this opinion no later than November 21, 2003.